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Public Infrastructure Advisory Commission

**BUSINESS, TRANSPORTATION AND HOUSING AGENCY**

December 23, 2010

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Public-Private Partnership Program Manager  
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Jose Luis Moscovich  
Executive Director  
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San Francisco, CA 94102

Dear Mr. Ajise and Mr. Moscovich:

As Chair of the Public Infrastructure Advisory Commission, I am pleased to enclose the Commission's comments on the final Public-Private Partnership Agreement for the Presidio Parkway.

Sincerely,

Dale E. Bonner  
Secretary

cc: Cindy McKim, Director  
Caltrans Department of Transportation

PIAC Commissioners

Jim Earp, Chair  
California Transportation Commission



**State of California**  
**Business, Transportation and Housing Agency**  
**Public Infrastructure Advisory Commission**



## **Comments on the Presidio Parkway Public-Private Partnership Agreement<sup>1</sup>**

*Approved December 16, 2010*

### **Summary**

The Presidio Parkway public-private partnership (Project) is the first project the Public Infrastructure Advisory Commission (Commission or PIAC) reviewed under its statutory mandate. Over several meetings the Commission reviewed documents, received briefings from the Project Sponsors and asked many questions. Based on preliminary analysis, the Commission recommended that the California Transportation Commission allow the California Department of Transportation (Caltrans) and the San Francisco County Transportation Authority (SFCTA), the "Project Sponsors" to seek competitive bids to complete the Project as a P3 and see if the bids delivered on the potential shown in the preliminary analysis. The PIAC then reviewed the outcome of the procurement process and the resulting Agreement and concluded that this P3 delivers considerable value to the State of California and its taxpayers and is likely to be a model for future P3 agreements.

### **1. Introduction**

In February 2009, the California Legislature passed and the Governor approved Senate Bill 4 during the Second Extraordinary Session of the Legislature. (Stats. 2009-2010, 2<sup>nd</sup> Ex. Sess., ch. 2, § 5, eff. May 21, 2009 (SBX2 4)). SBX2 4 amended Streets and Highways Code section 143 to authorize Caltrans to enter into comprehensive development lease agreements with public or private entities for transportation projects, commonly referred to as public-private partnership (P3) agreements. The bill also established the

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<sup>1</sup> **DISCLAIMER:** This document is summary of the Commission's comments on the Presidio Parkway P3 Agreement. It is not a legal document, and is not intended to be used to interpret or construe any provisions of the P3 Agreement.

PIAC as a unit within the Business, Transportation and Housing Agency (BTH) to, among other things, identify P3 transportation project opportunities in California.<sup>2</sup> Permanent regulations establishing the PIAC became effective in September 2009. (21 Cal. Code of Regs. §§ 7700-7711,)

Senate Bill X2 4 authorizes Caltrans and regional transportation agencies enter into P3 agreements that may include private sector finance, design, construction, maintenance, and operation of transportation facilities. To ensure that such arrangements are in the public interest, any proposed agreement must be submitted for review by the Legislature and the PIAC at least 60 days before Caltrans or a regional transportation agency signs the agreement.

The Presidio Parkway project is the first project to be examined by the Commission. The Commission reviewed the Project and supporting materials over several meetings and provided feedback and suggestions to the project proponents, and recommended to the California Transportation Commission that the project be pursued as a P3.

These are the Commission's review comments on the resulting P3 Agreement. The Commission's intent is both to make clear its key thoughts on the Agreement, as well as to identify lessons for future P3s. This report begins with a description of the project, the Commission's initial recommendation that the Project be pursued as a P3, and a brief summary of the Agreement. The Commission then offers comments on the benefits of the Agreement as well as some concerns about it, along with recommendations for future agreements. Finally, the Commission offers a few comments on future P3s for California.

## **2. Summary of the Project and the Agreement**

### **2.1 Description of the Project**

The Presidio Parkway, Doyle Drive Replacement Project is intended to replace the existing 73-year-old south access to the Golden Gate Bridge. Doyle Drive was built with narrow lanes, no shoulders and no median to separate oncoming traffic and is now structurally deficient. It is vulnerable to earthquakes and is at the end of its useful life. The facility serves 120,000 trips per day and it is the only regional roadway link between north Bay Area counties and San Francisco and the San Francisco Peninsula. The completed project will be known as the Presidio Parkway and is expected to cost

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<sup>2</sup> Sts. & Hy. Code § 143, subds. (a)(5) and (b)(1)(A). Current members of the Commission are identified in Appendix 1.

\$954 million to construct Phases I and II (per the Initial Financial Plan, May 2009, assuming a traditional procurement approach). The Presidio Parkway was environmentally cleared in December 2008 under both the National Environmental Policy Act and the California Environmental Quality Act. Because of concerns about the need to ensure seismic safety for the travelling public, Caltrans decided to accelerate the date of initiation of the construction phase. The project was split into two major construction phases. The first four contracts, which make up Phase I, will ensure that seismic safety is achieved as soon as possible. By the time Contract 4 is completed, all traffic will be circulating on either new structures or detour roads that are up to seismic standards. Contracts 5 through 8, approximately two-thirds of the construction cost, will complete the project. Phase I of construction started in November 2009.<sup>3</sup>

#### Phase I:

- Advanced Environmental Mitigation – (wet land creation, biological mitigation, tree removal, plant material collection and propagation). Mitigation prior to construction activities. Building stabilization prior to construction activities. Grading and contractor access. Geotechnical Demonstration - Cement Deep Soil Mixing (CDSM), for tunnel construction and pile indicators. Environmental mitigation during construction is accounted for in the individual contract budgets.
- Ruckman, portions of the Southern Park Presidio Interchange (PPI), South Bound (SB) High Viaduct. Including the southbound portion of the Presidio Interchange.
- South Bound (SB) Battery Tunnel, at grade detour, retaining wall # 6 and 8, permanent roadway sections, long weekend closure, partial demolition of low viaduct structures & open at-grade detour to public traffic.
- Utility relocation prior to the foregoing construction activity, including water, electric, sewer and telecommunications, and including private utility relocation for items owned by the Presidio Trust.
- Project work under Phase I will be completed under a traditional procurement process separate from the P3 agreement discussed here.

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<sup>3</sup> Taken from *Analysis of Delivery Options for the Presidio Parkway Project*, San Francisco County Transportation Authority and Caltrans, 2010. Also, see <http://www.presidioparkway.org/>

## Phase II:

- Main Post Tunnels, Northbound Battery Tunnel, Electrical and Mechanical Substation, Traffic Switch, Utility Adjustment
- Girard Road Undercrossing, Low Viaduct, Utility Adjustment
- Northbound High Viaduct, completion of the Park Presidio Interchange, Northbound Roadway to Merchant Road, Demolish Existing High Viaduct, Utility Adjustment
- Landscaping

## 2.2 PIAC's January 2010 Recommendation to the California Transportation Commission

After reviewing *Analysis of Delivery Options for the Presidio Parkway Project* and presentations from the Project Sponsors and consultants, the Commission voted to recommend that the Project be pursued as a P3. The Commission highlighted several reasons for this recommendation.

- 1) The current southern approach to the Golden Gate Bridge is antiquated, unsafe by today's design standards and vulnerable to major congestion. For example, because there are no shoulders, even a flat tire or a minor fender bender can create a huge traffic jam. This project needs to be completed as quickly and efficiently as possible, and a P3 procurement gives much greater assurance than would a traditional form of procurement, that the project will be completed as soon as possible.
- 2) The comparison of possible costs from different delivery options in *Analysis of Delivery Options for the Presidio Parkway Project* was well done, very thorough, and showed that a P3 structure had a very good chance of delivering significant long-term savings to the people of California.
- 3) By using a P3 method of procurement the Project Sponsors could shift to a private concessionaire full responsibility for timely, high quality project delivery. If the concessionaire does not deliver the project on time, or if the project does not meet the agreed upon detailed performance standards, the concessionaire will suffer major financial penalties. In contrast if the Project Sponsors were to use traditional procurement methods (i.e. not a P3), there would be no private party to hold legally accountable for project delivery. By allocating construction

risk to the concessionaire, the concession agreement helps insure against cost increases and brings performance specifications and incentives to bear on the project.

### **2.3 Summary of the Agreement**

The Project Sponsors selected the consortium Golden Link Partners as the private partner in the project. The consortium consists of equity members Hochtief and Meridiam, contractors Flatiron and Kiewit, and lead engineering firm HNTB. The agreement requires the consortium to take over the operation, maintenance, repair and renewal of the permanent Phase I improvements, commencing upon Phase I substantial completion, and to execute the design, construction, financing, operation, maintenance, repair and renewal of Phase II.

Put simply, the consortium takes over responsibility for the new improvements built in Phase I, designs and builds the Phase II improvements, maintains and rebuilds all of it for the next 33 years, and at the end of that time turns the facilities back to the state in pre-specified good condition.

In return, the consortium receives a Milestone Payment of \$173 million upon completion of the Phase II construction and the facility being open to traffic, and quarterly Availability Payments totaling \$28.5 million each year. They receive the full amount of the availability payments only if the facility is fully “available” during the payment period and meets all performance criteria. Failure to meet all criteria can lead to a reduction in the payments.<sup>4</sup>

The Agreement itself is a set of integrated contract documents (Contract Documents) that include:

- A public-private agreement (Agreement) setting forth legal and business terms for design, construction, financing, operation, maintenance and related matters;
- A project lease (Lease), signed concurrently with the Agreement; and
- by reference, two volumes of the procurement documents--Volume II (Technical Specifications) and Volume III (Manuals and Guidelines)

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<sup>4</sup> Proposal information available at [http://www.dot.ca.gov/hq/esc/oe/project\\_ads\\_addenda/04/04-1637U4/P3Agt\\_Final\\_Form/](http://www.dot.ca.gov/hq/esc/oe/project_ads_addenda/04/04-1637U4/P3Agt_Final_Form/)

## **Comments on the Agreement**

### **3.1 Conclusions on the Agreement**

The Project Sponsors articulated a set of goals for a successful P3 for the Presidio Parkway, and the Commission finds that the Agreement meets those goals:

- **Optimize Risk Allocation**—the Agreement allocates to the private partners the risks of on-time completion of the project, quality of construction, maintenance and operation of the facility, and performance on technical, social, and sustainability measures.
- **Attain Schedule and Cost Certainty**—the Agreement strongly incentivizes schedule certainty, as the Milestone Payment of \$173 million is not made until completion criteria are met. The private partners also bear all the risks for costs within their control, and fixes the payments required of the state.
- **Use Public Funds More Efficiently**—the Agreement provides for substantially lower ongoing maintenance costs over the 33-year period than would be the case with a conventional project, and ensures that the Parkway will be adequately maintained and not subject to deferred maintenance.
- **Minimize Lifecycle Cost**—the agreement reduces the cost of the project nearly by half, from an initial estimated cost of a net present value of \$625 million to an Agreement cost with a net present value of \$358 million.
- **Manage Competitive Tension to Optimize Value**—the bidding in the P3 process was open and competitive and, and a well organized evaluation process ensured that the results maximized cost savings, innovations, and performance criteria in the Agreement.

The Commission concludes that the Agreement, in meeting those goals as well as incorporating performance measures that ensure positive economic development outcomes, environmental protections, and maintenance and operations of the Parkway, is clearly beneficial to California and a successful outcome of a P3 procurement. The Commission provides more detailed comments on both benefits it sees in the Agreement, as well as concerns about it, in the next section.

## **3.2 Comments on Benefits of the Agreement**

### ***3.2.1 Cost Savings***

The P3 saves the Project Sponsors (and thus local and statewide taxpayers) about \$267 million in 2010 dollars over the lifetime of the Project. Initial estimates by the Project Sponsors were that building and maintaining the Parkway for 33 years via conventional means would cost \$625 million in net present value (NPV) terms. *Analysis of Delivery Options for the Presidio Parkway Project* estimated in advance that a P3 might reduce that cost to a NPV of around \$482 million. That possibility was a key reason the Commission recommended that the Project be pursued as a P3. After a competitive procurement process, the winning consortium agreed to build and maintain the Parkway for 33 years for a net present value of \$358 million.

This is particularly striking as that amount is based on a maximum annual availability payment of \$28.5 million, far below the "affordable limit" of \$35 million set by the California Transportation Commission when it approved a P3 competition for the Project.

### ***3.2.2 Performance-Based Incentives to Effectively Operate and Maintain the Facility***

The Agreement requires the concessionaire to maintain the Project to a specified level of quality for the entire life of the agreement. If an operations or maintenance problem is not promptly fixed, or highway lanes are closed without prior Department agreement, the concessionaire will suffer penalties. Thus, the P3 agreement takes maintenance of this facility out of the political arena, in which governmental budgets are hotly contested, and in which infrastructure maintenance needs often lose out to other budget priorities.

Table 4-2 of the *Technical Specifications* details the extensive performance measures that must be met at all times for the facility to be fully available. They cover a broad range of areas from many technical measures of maintenance of pavements, tunnels and elevated structures, as well as

#### **Sample Performance Measures**

(from Table 4-2 of *Technical Specifications*)

- Repair all pot holes and slippage areas greater than 0.5 square feet in area and/or 1.5 inches deep within 24 hours.
- Ride quality to be maintained at International Roughness Index (IRI) of less than or equal to 95.
- Maintain tree and shrub growth to provide at least a 17 foot high clearance above all travel lanes and shoulders.
- Remove graffiti if it is of an obscene nature within 24 hours.
- Response to sites of incidents, emergencies, accidents, and other events that result in a condition that is unsafe and/or may present a life threatening condition within 10 minutes of notification.



incident response, and many others (see box). In addition, the Agreement requires the concessionaire and project sponsors to develop a set of sustainability measures that will be included in the performance measures.

The concessionaire is incentivized to meet these performance standards in two ways. First, many of the performance measures affect the availability of the facility and failure to meet these standards will invoke specified monetary deductions from the quarterly availability payments the state makes to the concessionaire. For example a failure to remove graffiti from traffic devices where there is a safety concern within 24 hours results in a \$3000 deduction in the availability payment. The deduction is assessed every 24 hours until the graffiti is removed.

Second, the Agreement contains a non-compliance points system. Noncompliance(s) are assessed when performance measures that don't directly affect availability are not met. The accumulation of noncompliance points triggers remedies established in the Agreement that the department can exercise such as increased oversight, testing and inspection, and issuance of persistent noncompliance can lead to a reduction in payments or, if extreme enough, to default of the agreement.

### ***3.2.3 Incentives for Cost and Schedule Control***

The Agreement establishes a fixed maximum Milestone Payment of \$173 million maximum to pay for construction. The concessionaire bears the risk for any controllable cost overruns beyond that amount. The annual Availability Payments are similarly fixed, and the concessionaire bears the risks for higher costs to meet the performance standards, including maintenance and renewal work and meeting handback requirements.

The concessionaire does not receive the Milestone Payment until the criteria for Substantial Completion of the facility are met, a powerful incentive for them to complete the Project as quickly as possible. Project Sponsors can withhold up to \$3 million of the Milestone Payment for performance-based penalties.

### ***3.2.4 Incentives for Extraordinary Use of Local and Disadvantaged Businesses***

P3 agreements typically include some form of requirements to utilize some local and disadvantaged businesses. The Presidio Parkway includes substantial goals (see table) but also provides innovative incentives to exceed the goals. The concessionaire may accrue "Non-Compliance Offsets" for exceeding the goals, so while they are not paid

extra for exceeding the goals, they can reduce performance penalty points they may have been assessed.

Category	Goal
Disadvantaged Business Enterprise	13.5%
Underutilized Disadvantaged Business Enterprise	5%
Small Business Enterprise	25%
Disabled Veteran Business Enterprise	3%
Local Business Enterprise	5%

### ***3.2.5 Allocation of Risks and Benefits from Refinancing***

The Agreement financial plan includes debt as well as equity, and while most of the debt will be retired when the Milestone Payment is made, in the event of a refinancing that significantly lowers cost, the Project Sponsors are entitled to 60% of any gain not contemplated in the original financial proposal

### ***3.2.6 Transparency of Process and Value of High Quality Up-Front Analysis***

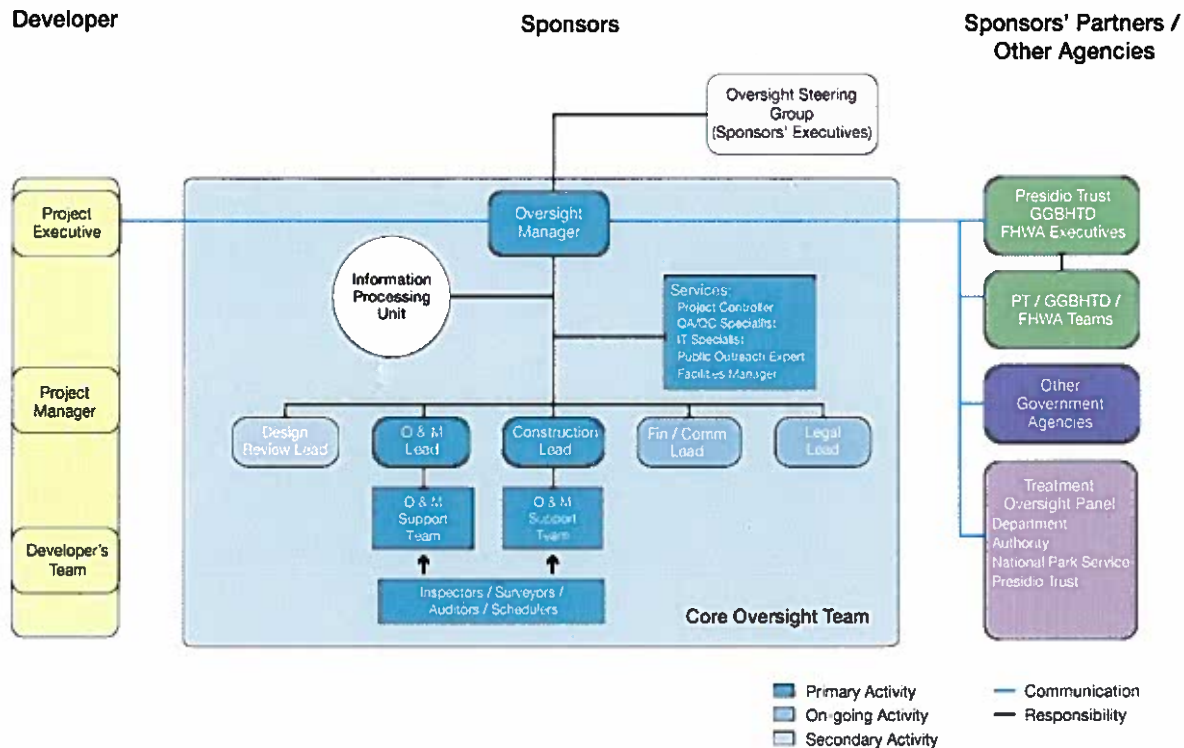
Project Sponsors provided excellent information on the proposed P3 to the public, the California Transportation Commission and the PIAC. Moreover, they invested in consultants to do a thorough up-front analysis comparing a likely range of outcomes from various alternative methods of delivering the Project-- *Analysis of Delivery Options for the Presidio Parkway Project*. The vast majority of P3s in the U.S. advance without such thorough advance analysis. In this case, it allowed all involved to see the possible advantages of a P3 and supported proceeding with the bids, which resulted in an Agreement to deliver the Project with great benefits to Bay Area residents and the State.

### ***3.2.7 Contract Administration and Inspection***

The Agreement establishes an oversight and performance management structure for the P3. Along with the incentive and performance measure structure already discussed, the Agreement requires the concessionaire to maintain a self-monitoring system and provide all data to the Project Sponsors, who will perform oversight and audits relating to performance standards, including electronic monitoring systems.

Project Sponsors have established an Oversight Steering Group to manage accountability within the P3 (see diagram):

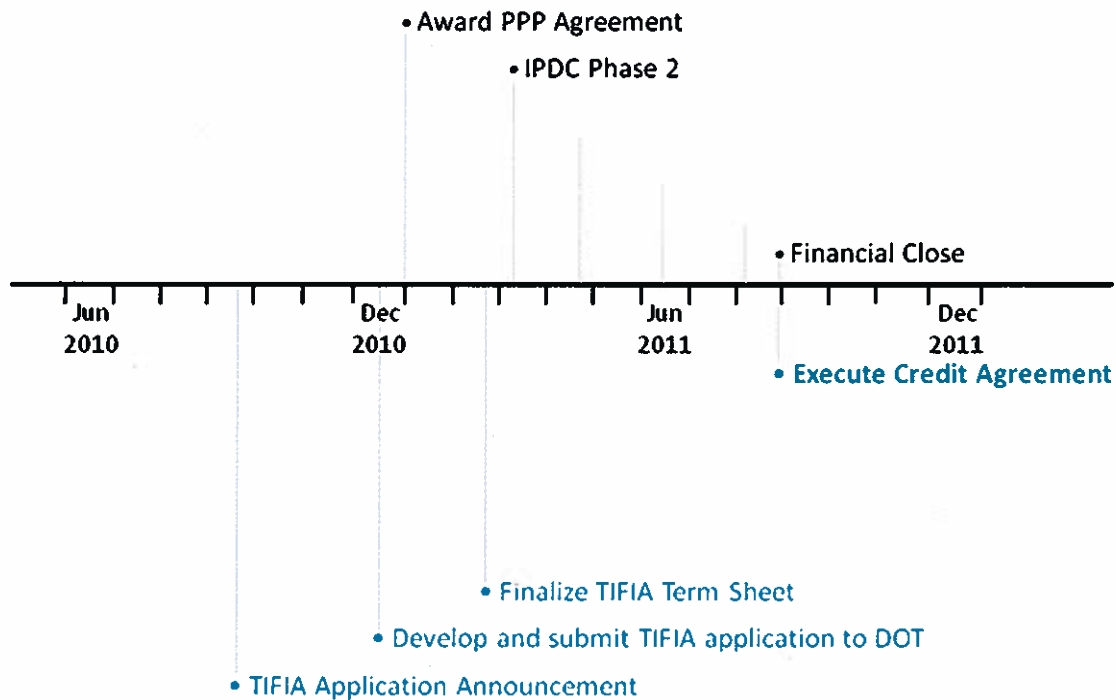
### Project Oversight Structure



### 3.2.8 Financial Plan

The concessionaire's bid includes a financing plan. The Agreement requires the concessionaire to run a competition designed to maximize competition among qualified debt sources for financing the Project. The results of the financing competition will be compared to the costs of financing reasonably assumed in concessionaire's financing plan. The amount of the maximum availability payment will be adjusted (up or down) for differences between the actual cost of financing and that reasonably assumed in the financing plan. However, any such adjustment cannot exceed the affordability limit set by the California Transportation Commission. Both the debt financing and the TIFIA credit agreement are anticipated to close by September 2011 (see diagram):

## Project Financing Timeline



The concessionaire has also fully committed equity to the Project. Generally speaking, the debt is aligned with the construction costs and will be at least substantially paid off with the Milestone Payment upon completion of construction. The equity backs the long-term operations and management of the facility as paid for by the annual Availability Payments.

The sources of funds to pay the Milestone Payment and the annual Availability Payments include federal, state, and local funds over the lifetime of the Agreement (see table).

### Sources of Project Funds (in millions and Year of Expenditure)

Funds Source	Proposed
Fed C-PLHD	\$13.20
Fed R- ER Demo	\$6.00
Fed R-Earmark	\$20.00
Fed Stim (TIGER)	\$46.00
State SHOPP	\$62.51
State SHA*	\$1,100.00
SFCTA -Prop K	\$38.80
SFCTA-RIP	\$54.23
SFCTA-RIP	\$13.00
SFCTA-SLPP	\$21.00
GGGHTD	\$75.00
Sonoma	\$1.00
Marin	\$4.00

\* State SHA funds are only for Availability Payments and related costs over a 30-year period as provided in the FY10/11 Budget legislation.

### ***3.2.9 There is No Non-Compete Clause***

A common concern about highway P3's is the possibility that a P3 agreement might restrict the government from developing competing transportation facilities or from performing work on the facility deemed necessary but outside the scope of the agreement. This Agreement contains no restrictions on Caltrans or any other transportation entity performing work on or near the Project during the lease term.

### ***3.2.10 Appropriations Risk***

An availability payment structure could mean that each year of the agreement, the Legislature must appropriate funds to make the annual availability payment as part of the state's annual overall transportation spending. So there is some risk that in a future year or years, the legislature will find other priorities for transportation spending and may not appropriate funds for the availability payment. However, the FY 2010/2011 Budget Bill passed by the Legislature and approved by the Governor, included continuous appropriation for availability payments for the Project.

The Agreement places all the risk for this on the concessionaire. They then must either default and terminate the Agreement, or must continue to perform all operations and maintenance in such an event as long as Caltrans:

- Includes all payments that will become due in the next Fiscal Year in its annual STIP Fund Estimate for CTC adoption and in its annual budget requests and mid-year budget augmentation requests;
- Commits to use all resources legally available to budget all payments due to the concessionaire; and
- Uses best efforts to obtain funding.

Caltrans agrees to prioritize payments for this project ahead of annual capacity for projects for which it does not have contractual obligations, and also agrees not to establish any other project contractual obligations higher than the prioritization of payments due under this Agreement.

### **3.3 Comments on Concerns with the Agreement**

#### ***3.3.1 Long-Term Impacts of Availability Payments on the State Highway Operation and Protection Program (SHOPP)***

The Agreement commits the state to pay an annual availability payment for 30 years for the operations and maintenance of the Presidio Parkway. This is similar to some forms of debt in that it creates a type of obligation in each year's budget and reduces Caltrans flexibility in using its funds for what conceivably could be dramatically different priorities decades from now. While this obligation is a small percentage of total annual spending, undertaking it should not be taken any more lightly than any other type of debt obligation.

#### ***3.3.2 Use of Net Present Value in Assessing Costs of the P3***

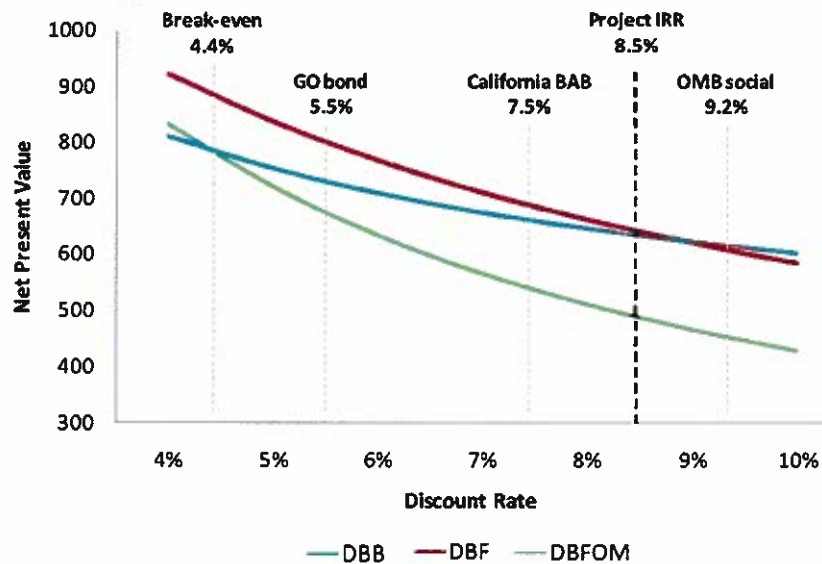
Figuring out how to compare future savings to costs today is tricky. We all know that if someone offers you \$5 now or \$5 ten years from now, the current \$5 is worth considerably more. Likewise future savings are worth less than current savings. So we have to discount the value of future savings to create a net present value of the alternatives, such as those discussed above in section 3.2.1. Those numbers are based on a discount rate of 8.5% which is the pre-tax, time-weighted weighted average cost of capital (WACC) for the Project. While the WACC is the discount rate typically used for infrastructure investment decisions like this, it is not without controversy. There is no "right" discount rate—they are all estimates based on different assumptions.

So the Commission does not have particular concerns about the discount rate used, but wishes to highlight that it is an approximation, a useful tool to guide judgment of the benefits of the P3, but it can be controversial to some and is no guarantee that all will value the costs and benefits of the Project the same ten years from now as they do today. In this instance, the Project Sponsors effectively addressed this issue by including the following sensitivity analysis showing a range of discount rates that all result in positive value for money<sup>5</sup>:

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<sup>5</sup> Taken from *Analysis of Delivery Options for the Presidio Parkway Project*, San Francisco County Transportation Authority and Caltrans, 2010.

**Exhibit G2: Sensitivity of NPV by Delivery Option to Varying Discount Rates**  
(NPV\$, Million) Pre-tax weighted WACC



Note: California general obligation and Build America Bond rates fluctuate  
Source: Arup and as per table below

Source: Analysis of Delivery Options for the Presidio Parkway Project, February 2010, Appendix G, Page G5

**Exhibit G3: Further Information on Reference Rates**

Approach	Value	DBB	DBF	DBFOM	Reference	Comments
(NPV\$, Million)						
Social preference rate or social discount rate	9.2%	619	614	469	U.K. HM Treasury approach; in the US based on OMB Circular A-94 for projects with social benefits.	The OMB A-94 rate is 7% real, to which inflation assumed at 2.2% in this report is added.
Project pre-tax, time-weighted WACC (base case)	8.5%	635	642	488	Partnerships BC approach using Project pre-tax, time-weighted WACC, which is calculated from the project's audited financial model.	Approach in Australia is similar.
Risk free rate (government cost of capital rate) – taxable	7.5%	660	687	538	Based on California taxable 30 year bonds.	Taxable bond does not include the implicit subsidy represented by the foregone tax revenues that are a cost to taxpayers.
Risk free rate (government cost of capital rate) – tax exempt	5.5%	730	802	676	Based on California General Obligation 30 year bonds.	CA GO rate is a tax-exempt rate. See comments above.

Source: Analysis of Delivery Options for the Presidio Parkway Project, February 2010, Appendix G, Page G6

### ***3.3.3 Lack of Specifics on Sustainability Performance Measures***

While the Commission admires and support the performance based approach used in the Agreement, and applauds the plan to include hard sustainability performance measures in the P3, those measures are not yet known, and the Commission is concerned about the follow up. The Commission would like the Project Sponsors to make sure that the sustainability performance measures in the concessionaire's action plans are robust and enforceable and that compliance with these obligations is also included in the system of penalties and incentives in the Agreement.

### ***3.3.4 Structural Change in Concessionaire Firms***

The concessionaire, Golden Link Partners, is a consortium led by Hochtief from Germany and Meridiam from France. Hochtief is currently engaged in a takeover battle with ACS, a large Spanish construction company with investments in Canada and the United States, among many other countries. The Commission has some concern about the impact that the resolution of this situation could have on the management of the Project and that Project Sponsors ensure continuity with the concessionaire.

### ***3.3.5 The Extent to which this P3 is a Model for Future Projects***

There are many aspects to this P3 that make it worthy of emulating on future projects. At the same time, an availability payment approach limits the extent to which it can be emulated. As mentioned in 3.3.1 above, an availability payment structure has features similar to some forms of debt to the extent it obligates a portion of each future year's spending. Too much of that would limit future spending flexibility to the potential detriment of the state's overall transportation system performance. So, while this project model is worthy of being used again in the future, Caltrans should take care to limit the percent of the SHOPP that winds up obligated in such agreements.

## **3.4 Recommendations for Future Agreements**

The Commission agrees that this P3 is good for the residents of the Bay Area and California. The Commission's specific recommendations for the future are:

- 1) BTH and local transportation agencies do not hesitate to explore whether P3s are appropriate for future construction projects and operation and maintenance of



existing facilities and seek the kind of performance enhancements and cost savings found in this project.

- 2) BTH establish a policy capping the percentage of the SHOPP that can be spoken for by availability payment projects.
- 3) P3 agreements adopt a similar performance assessment and incentive structure as used in this Agreement.
- 4) After 3-5 years have elapsed following delivery of the Project, the Project Sponsors conduct a rigorous assessment of the O&M performance assessment and incentive system used in this Agreement to determine what worked well and what did not and produce a report to help guide future P3s.
- 5) In future P3 procurements include sustainability performance measures in the competitive bidding process and use them to help select a winner, rather than negotiating them ex post.
- 6) Sponsors of future projects invest in a similar quality up-front analysis of the various delivery methods available to help select the approach that provides the most bang for the buck.
- 7) Future P3 agreements consider similar incentives for extraordinary use of local and disadvantaged businesses.
- 8) The State should pursue additional dedicated revenue sources for future P3 projects.

#### **4. Comments on Availability Payment P3s**

Availability payment P3s are a relatively new means of structuring P3s in the United States. Put simply, they are P3s where the private partner maintains and manages a facility, and as long as the facility is available to the public for use, the government partner pays the private partner an “availability” payment.<sup>6</sup>

This is an alternative to what might be considered a “conventional” P3 arrangement in which the private partner collects user fees for the facility – so in the case of a road, tolls.

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<sup>6</sup> See the AASHTO primer on availability payments at [http://www.transportation-finance.org/funding\\_financing/financing/other\\_finance\\_mechanisms/availability\\_payments.aspx](http://www.transportation-finance.org/funding_financing/financing/other_finance_mechanisms/availability_payments.aspx)

Availability payments are used when for some reason direct user fees like tolls are not going to be assessed on a facility, so the government makes the payments instead.

A crucial characteristic of availability payment P3s is that they are typically based on performance standards that define “availability” and govern both how the private partner manages and maintains the facility and how the government partner makes payments. For availability payment P3s to succeed it is crucial that the performance measures are correct and the incentive structure is adequate.

Availability payment P3s are used extensively in Canada, Europe and Australia, and the Presidio Parkway is not the first in the United States. For example, Florida used an availability payment P3 for the upgrade of a 10.5 mile segment of the I-595 near Ft. Lauderdale.

The key limitation of availability payment P3s is that they create long-term financial obligations on the government partners similar in some ways to some forms of debt. They must ensure there is adequate funding in the long run to both meet availability payment agreements as well as fund conventional maintenance and operations needs. Unlike debt, though, there is no direct cost of borrowing, so conceivably a state could arrange for maintenance of the entire state network under availability payment P3s, assuming they were certain to get adequate funding to make the payments in the future.

## **5. Comments on Future PPPs in California**

### ***5.1 Project Pipeline***

The PIAC is charged to work with Caltrans and regional transportation agencies in California to identify and develop projects for which P3s may deliver substantial value to the public. To that end the Commission has created an “emerging project pipeline” that consists of projects that: (1) meet a high-priority transportation need; (2) enjoy significant public and political support; (3) have or soon will have achieved sufficient environmental readiness; (4) show the promise of greater value – including speed of delivery – than conventional procurement; and (5) have the potential to generate revenue or enhance program capacity through better cash or other means.

Projects are categorized in pipeline levels one (low readiness) through four (high readiness), depending upon the level of progress and effort towards P3 delivery. More specifically:

Level One projects have multiple indicators of P3 suitability, have one or more agencies evaluating whether the project might be suitable for a P3 approach, and have known private sector interest in the project. Projects identified in Level One at this point are:

- I-5 Managed Lanes
- Otay Mesa / SR-11
- Schuyler Heim Bridge / SR-47
- High Desert Corridor
- I-710 North
- I-710 Freight Corridor

Level Two projects meet all the criteria of Level One, plus have a signed cooperative agreement among project sponsors, CTC nomination, and/or pre-procurement steps imminent. The only project identified in Level Two at this time is the Bay Area Express Lane Network

Level Three projects meet all the criteria of Level Two, plus have a completed business case analysis and have been nominated to the CTC for selection. There are no projects identified in Level Three at this time.

Level Four projects meet all the criteria of Level Three, plus have plus have CTC selection and have begun procurement. The only project identified in Level Four at this time is the Presidio Parkway P3 project.

The PIAC is eager to work with the relevant agencies to move some of the projects in Level One up the pipeline as well as identify new projects for Level One.

## ***5.2 Non-transport P3 Prospects***

In 2008 the Department of Finance estimates that California needs \$500 billion worth of infrastructure over the next two decades. This includes roads, transit, bridges, flood control facilities, public buildings and many other types of facilities.

It is inconceivable that the state will be able to afford that level of investment of direct state funds via conventional project delivery. P3s will be necessary to make many of these needed facilities financially feasible.

The Commission wants to ensure that the work it has done and will do on transportation P3s helps provide lessons learned and best practices that advance the responsible use of P3s for other forms of infrastructures projects by state and local agencies. To meet the kind of infrastructure development needs the state faces, we cannot afford to reinvent the wheel for each project.

**APPENDIX 1**  
**Commission Members**  
**(as of December 16, 2010)**



**Secretary Dale E. Bonner, Chair**

Since March 2007, Dale E. Bonner has served as Secretary of the Business, Transportation and Housing Agency. As Secretary, he oversees 14 departments and several economic development programs and commissions consisting of more than 45,000 employees and a budget of \$20 billion.



**Ruben Barrales**

Ruben Barrales is the President and Chief Executive Officer of the San Diego Regional Chamber of Commerce, Southern California's most influential business organization.



**Joseph Cruz**

Joseph Cruz serves as the Director of Transportation Policy/Government Relations for the California Alliance for Jobs, a labor-management partnership that serves more than 2,000 contractors in the heavy construction industry and the 100,000 union members they employ throughout Northern and Central California.



**Danny Curtin**

Mr. Curtin is the director for the California Conference of Carpenters.



**Lee Harrington**

Lee K. Harrington is currently Executive Director of the Southern California Leadership Council, a group of Southern California business leaders joined by California's four former Governors in a public policy partnership with the Los Angeles Economic Development Corporation to create initiatives to protect and enhance the economic vitality and quality of life of the mega region.



**Charles Hilliard**

Charles Hilliard is President and Chief Financial Officer of Demand Media. He leads Demand Media's financial, legal, human resources and IT operations, drawing from over 20 years of experience in executive management, investment banking and public accounting.



**Tom Holsman**

Tom Holsman is currently the CEO of the Associated General Contractors of California (AGC).



**John V. Hummer**

John Hummer currently serves as Director of the U.S. Department of Transportation's Northern California/Hawaii Gateway Office in San Francisco, and recently served as Deputy Secretary for Goods Movement at BT&H.



**John Husing, Ph.D.**

Dr. John Husing is a research economist specializing in the study of Southern California's growing economy. His primary focus over 45 years has been the Southern California and Inland Empire economies.



**Roger A. Kozberg**

Roger Kozberg is a Managing Director in the Los Angeles office of Hub International, one of the world's leading insurance brokerage firms. His insurance industry career spans more than forty years. He also served as an officer in the United States Navy.



**Ray Levitt**

Ray Levitt is a Professor of Civil and Environmental Engineering at Stanford. Dr. Levitt teaches classes in strategic planning and organization design for project/matrix organizations to engineering undergraduate, MS and Doctoral students, and to corporate executives.



**Richard G. Little**

Richard G. Little is a Senior Fellow in the School of Policy Planning and Development and Director of the Keston Institute for Public Finance and Infrastructure Policy at the University of Southern California.



**Paul Meyer**

Mr. Meyer has served as Executive Director of the American Council of Engineering Companies of California and one of its predecessor organizations since 1981. Prior to joining ACEC California, he served three years as Executive Director of the Faculty Association for California Community Colleges.



**Adrian Moore, Ph.D.**

Adrian Moore, Ph.D., is vice president of research at Reason Foundation, a non-profit think tank advancing free minds and free markets.



**Devin I. Murphy**

Mr. Murphy currently serves as the managing director and vice chairman in the investment banking division of Morgan Stanley. Previously, he was a managing partner of Coventry Real Estate Advisors—a real estate private equity firm headquartered in New York.



**Elizabeth O'Donoghue**

Liz O'Donoghue serves as the Director of Infrastructure and Land Use at The Nature Conservancy of California; she oversees the Chapter's policy agenda on infrastructure, energy and land use, strategic growth and integration with natural resource protection, and the Organization's national transportation policy agenda.



**Katherine Perez**

Katherine Perez is the Executive Director of the Urban Land Institute, Los Angeles District Council. With her diverse background in private real estate development, governmental policy and urban planning, she has emerged as one of the most articulate and credible



**Sean Randolph**

Sean Randolph is President and CEO of the Bay Area Council Economic Institute, a public-private partnership of business, labor, government and higher education that works to foster a competitive economy in California and the Bay Area, including San Francisco, Oakland and the Silicon Valley.



**Roger Snoble**

Roger Snoble's career in transportation spans 45 years. Snoble was the Chief Executive Officer of the Metropolitan Transportation Authority of Los Angeles County.





**Peter J. Taylor**

Peter J. Taylor has been Chief Financial Officer and Executive Vice President of the University of California system since April 6, 2009. Mr. Taylor served as a Senior Vice President with Lehman Brothers, Inc. in the Public Finance Department.



**Antonio Vives**

Antonio Vives is a Principal Associate at Cumpetere and Consulting Professor at Stanford University.



**Steve Wilder**

Steve Wilder is the Vice President-Risk Management for The Walt Disney Company. His department is responsible for directing Disney's worldwide corporate Risk Management program.